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9:00 **FILED**
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MAY 2 2010
JEANNE HICKS, Clerk
BY Deputy

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR DISMISSAL OF DEATH
QUALIFIED JURY

The State of Arizona, by and through Sheila Sullivan Polk, Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion for Dismissal of Death Qualified Jury and requests that Defendant's Motion be denied. The State's position is supported by the following Memorandum and Points of Authority.

MEMORANDUM OF POINTS AND AUTHORITIES

Issue: Whether A Death-Qualified Jury Can Fairly And Impartially Render A Verdict Of Guilt Or Innocence

I. Our courts have consistently held that allowing a death qualified jury to determine guilt does not violate any of a defendant's constitutional rights.

In *Lockhart v. McCree*, 476 U.S. 162, 106 S.Ct. 1758 (1986), the United States Supreme Court determined that death qualification of a jury does not violate a defendant's right to a fair and impartial jury. In *Buchanan v. Kentucky*, 483 U.S. 402, 107 S.Ct. 2906

1 (1987), the United States Supreme Court considered whether a death-qualified jury in a joint
2 trial where the death penalty was sought against only one co-defendant was a violation of the
3 other's Sixth Amendment right to a fair and impartial jury.

4 On earlier appeal, the Supreme Court of Kentucky rejected the defendant's
5 "contention that the 'death qualification' of the jury deprived him of his right to an impartial
6 jury" and opined that "a 'death-qualified' jury was not 'extra-ordinarily conviction-prone'
7 rather, '[a] death-qualified panel tends to ensure those who serve on the jury [will] be willing
8 to follow the evidence and law rather than their own preconceived attitudes.'" *Buchanan* at
9 413, 107 S.Ct. 2906 at 2912. (citations omitted) (alterations in original). In fact,
10 "[c]onstitutional challenges to the use of a death-qualified jury in the guilt-innocence portion
11 of the trial have been soundly and repeatedly rejected." *United States v. Brown*, 441 F.3d
12 1330, 1354 (11th Cir. 2006). See also *California v. Taylor*, 299 P.3d 12 (2010); *Dotch v.*
13 *Alabama*, 2010 WL 1260162 (2010); *Eaton v. Wyoming*, 192 P.3d 36 (2008).

16 ***II. The Arizona Supreme Court has never held that a death-qualified jury is conviction***
17 ***prone.***

18 The defense team has taken great liberty with an excerpt from *State v. Anderson*, 197
19 Ariz. 314, 4 P.3d 369 (2000), by suggesting it indicates the Arizona Supreme Court has
20 acknowledged that death-qualified juries are conviction prone. This is simply not the case.
21 The issue discussed in *Anderson* was the trial judge's denial of questioning by defense
22 counsel of three persons who answered on the jury questionnaire that they were opposed to
23 the death penalty and could not set aside their beliefs. The defense counsel sought to
24 rehabilitate them with additional *voir dire*.

25 The internal quote "organized to return a verdict," which defense used out of context
26 and failed to give proper acknowledgement or cite accurately, was used in *Witherspoon v.*

1 *Illinois*, 391 U.S. 510, 521, 88 S.Ct. 1770, 1776 (1968). The entire quote is:

2 It is, of course, settled that a State may not entrust the
3 determination of whether a man is innocent or guilty to a
4 tribunal 'organized to convict.' *Fay v. People of State of New*
5 *York*, 332 U.S. 261, 294, 67 S.Ct. 1613, 1630, 91 L.Ed. 2043.
See *Tumey v. State of Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71
L.Ed. 749.

6 *Id.*

7 As the Court is aware, *Witherspoon* held that a defendant's Sixth Amendment Right
8 is violated if a judge in a capital case excludes for cause a person who has general objections
9 to the death penalty. Clearly, the quote in *Anderson* was used to illustrate that a "general
10 objection to the death penalty is not sufficient to create a presumption that a prospective juror
11 is unfit because of bias to sit on the panel," *Anderson* at 318, 4 P.3d 369 at 373, and does not,
12 in any way, express the Arizona Supreme Court's acknowledgement that a death-qualified
13 jury is more conviction prone.
14

15 In fact, when presented with a question related to a death-qualified jury, the Arizona
16 Supreme Court typically defers to the United States Supreme Court's finding that "an
17 impartial jury consists of nothing more than jurors who will conscientiously apply the law and
18 find the facts.'" *Atwood v. Schriro*, 489 F.Supp.2d 982, 1046 (2007) (citing *Lockhart v.*
19 *McCree*, 476 U.S. 162, 178, 106 S.Ct. 1758, 1767 (1986)). Defense counsel is disingenuous
20 for offering this misrepresentation.
21

22 **III. *The time and cost involved of calling an entirely new panel must be considered.***

23 As a death-qualified jury during the guilt phase of a trial does not violate a
24 defendant's constitutional rights, the cost of dismissing the remaining panel and the time and
25 cost required to select a new jury must be considered. As a complex death penalty case, the
26 State and the defense team anticipated this case would require thirty trial days. The current

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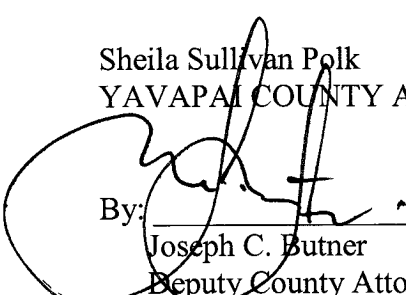
1 trial scheduled ends on July 9, 2010. In an attempt to empanel a fair and impartial jury,
2 hundreds of Yavapai County residents have been required to travel to one of the Yavapai
3 County courthouses to complete a 22 page questionnaire containing 95 questions. Over two
4 hundred individuals have been ordered to come before this Court for additional questioning.
5 After four weeks and thirteen trial days, forty have been found to be acceptable to both the
6 defense and the prosecution. If we proceed with the current panel, it is entirely conceivable
7 that a jury could be empanelled as soon as this afternoon, Friday, May 28th, and opening
8 statements could begin as early as Wednesday, June 2nd. While the trial may go long, it will
9 not cause the total disruption that will come about as the result of starting over.

11 **CONCLUSION:**

12 A death-qualified jury during the guilt phase of a trial does not violate a defendant's
13 constitutional rights and the cost and time requirements of selecting a new jury must be taken
14 into account. Defendant's Motion to dismiss the current panel should be denied.
15

17 RESPECTFULLY SUBMITTED this 28th day of May, 2010.

19 Sheila Sullivan Polk
20 YAVAPAI COUNTY ATTORNEY

21 By: 
22 Joseph C. Butner
23 Deputy County Attorney

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26 ///

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1 COPIES of the foregoing hand delivered this
2 28th day of May, 2010 to:

3 Honorable Thomas J. Lindberg
4 Division 6
5 Yavapai County Superior Court

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